

## Department of Energy (DOE) Competitive Sourcing Program Operating Guidelines

### 1. REFERENCES

- A. Office of Management and Budget (OMB) Circular No. A-76, Performance of Commercial Activities, and the Revised Supplemental Handbook (RSH) for the Performance of Commercial Activities, August 1983, Revised June 1999.
- B. Draft DOE Competitive Sourcing Program Guidebook (CSPG). (The Guidebook serves as an implementation handbook for the Department's Competitive Sourcing Program.)

### 2. PURPOSE

To establish guidelines for the execution of DOE's Competitive Sourcing Program.

### 3. APPLICABILITY AND SCOPE

- A. The Competitive Sourcing Program Operating Guidelines are applicable to all DOE organizations and staff responsible for the execution of the Department's Competitive Sourcing Program.
- B. The Draft DOE CSPG provides procedures for implementing the Competitive Sourcing Program Operating Guidelines.

### 4. DEFINITIONS

Fundamental terms used in these Guidelines are defined in this section. A more comprehensive set of competitive sourcing terms and their definitions are contained in the DOE CSPG.

- A. Commercial Activity (CA). A function, product, or service performed by the Government on a recurring basis that could be obtained from a private sector source.
- B. Competitive Sourcing. A management tool used by the Government to determine the most efficient and economical means by which to have a commercial activity performed. The terms "commercial activities study," "cost comparison study," and "A-76 study" are synonymous and may be used interchangeably.
- C. Cost Comparison. The formal process used to estimate the cost of Government performance of commercial activity compared to the cost of performance offered by a contractor, or Inter-Service Support Agreement (ISSA) provider. A cost comparison is the basis for determining which potential provider wins the competition.
- D. Cost Comparison Waiver. A management decision made in accordance with OMB Circular A-76, that authorizes a commercial activity to be converted to or from in-house, contract or ISSA performance, without a cost comparison study.

- E. Direct Conversion. A form of competitive sourcing where an activity is converted to or from in-house, contractor, or ISSA performance without conducting a full or streamlined cost comparison. Activities chosen for direct conversion may be awarded to alternate providers such as Preferential Procurement Programs, existing contractors, or other Federal agencies without the development of a Management Plan.
- F. Full Cost Comparison. A form of competitive sourcing which requires the development of the Performance Work Statement (PWS), Quality Assurance Surveillance Plan (QASP), and a Management Plan. The process also solicits external offers and compares the in-house cost with the cost of a private or federal offeror to determine which method of performance is in the best interest of the Government.
- G. In-House Cost Estimate (IHCE). The Government's cost estimate for the Most Efficient Organization (MEO) performance of the requirements in the PWS.
- H. Management Plan. A plan developed by the MEO Team that identifies the organizational structure, staffing, and operating procedures required to perform the requirements of the PWS. The Management Plan could include the following documents: MEO, IHCE, Technical Performance Plan (TPP), and Transition Plan. A TPP is included in the Management Plan whenever the Cost/Technical Tradeoff acquisition process is utilized.
- I. Preferential Procurement Program. Special "commercial" source programs such as Federal Prison Industries and the workshops administered by the Committee for the Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day (JWOD) Act. OMB Circular A-76 – Update XI also authorizes direct conversions to Native American owned firms in much the same way as the JWOD Act.
- J. Performance Work Statement (PWS). The PWS serves as the scope of work and is the basis for all costs entered on the Cost Comparison Form. It contains the technical, functional and performance characteristics of the work to be performed. The PWS identifies essential functions, performance standards, including the location of the work, the units of work, the quantity of work, and timeliness of the work units.
- K. Streamlined Cost Comparison. A form of competitive sourcing involving 65 FTEs or less, that identifies and compares the current cost of in-house work force performance to comparable service contracts or ISSA offers to determine which method of performance is in the best interest of the Government.
- L. Substantially Involved Employee. Any person(s) authorized to render a formal competitive sourcing study or procurement related decision on behalf of the Department.
- M. Residual Organization. The inherently governmental component and personnel necessary to perform continuing Federal activities including the employees who provide oversight to the MEO, Contractor, or ISSA winner of a cost comparison. The term "continuing government authority" is synonymous and may be used interchangeably.

## **5. OPERATING PARAMETERS**

### **A. General**

1. Whenever practicable, DOE will utilize competitive sourcing and other management tools to encourage improvements and competition in agency functions with the objective of enhancing agency quality, economy, and performance. To that end, when a commercial activity is being performed in-house and it is viable, a comparison of the cost of contracting and the cost of in-house performance may be performed to determine an appropriate course of action.
2. The Department will utilize the provisions of OMB Circular A-76, the RSH, the DOE Competitive Sourcing Program Operating Guidelines, the Federal Acquisition Regulations (FAR), the Department of Energy Acquisition Regulations (DEAR), and other appropriate regulations and internal directives in conducting its commercial activities studies. All studies will be conducted in a fair, responsible, and equitable manner, providing all key players with a level and objective playing field, and no foregone conclusions shall dictate the outcome of any commercial activity study.
3. When complying with these Operating Guidelines and the OMB Circular, DOE Elements shall consider and ensure that the Department's overall mission requirements and strategic objectives are met.
4. The Department will work to ensure that employees, customers, and key stakeholders are kept apprised of its Competitive Sourcing actions/decisions.
5. DOE Organizations shall annually provide requested Federal Activities Inventory Reform Act (FAIR Act) data to the OCS to facilitate submission of the Department's Inherently Governmental and Commercial Activities (IGCA) Inventory to the OMB.
6. All final competitive sourcing decisions of the Department will be made on a case-by case basis.

### **B. Study Planning**

1. The Secretary of Energy has appointed the Competitive Sourcing Executive Steering Group (CSESG) to serve as the Department's OMB Circular A-76 Competitive Sourcing (Paragraph 9a) Official with responsibility for implementation of the Circular and its Supplement within DOE. The CSESG, which includes the Deputy Secretary, both Under Secretaries, and the Director of Management, Budget and Evaluation/CFO, has responsibility for nominating candidates for competitive sourcing studies and overseeing the execution of the studies. The CSESG shall appoint Functional Area Study Team Leaders to provide day-to-day oversight over study planning and execution.

2. In determining which candidate functions to subject to competitive sourcing, the Department will conduct a business case analysis looking at such factors as the severability of the work/activities under consideration, the impacts on agency modernization, budget, and workforce planning initiatives, risks to mission accomplishment. The availability of private sector offerors, and the potential for achieving efficiencies and cost savings will also be considered. Some competitive sourcing candidate functions may be addressed, upon further evaluation, by other management tools (e.g., business process reengineering).
3. Certain functions are inherently governmental in nature, and/or are so intimately related to the public interest, that they mandate performance by DOE personnel only. While these positions may be reviewed in the broader context of a commercial activity study, and are subject to decisions by DOE management, they will not be offered to commercial sources for competition.
4. Employees involved with competitive sourcing studies will be provided with necessary training on A-76 policies and procedures.
5. During the planning phase, the Functional Teams should develop Action Plans for the review and approval of the CSESG. Team roles and responsibilities, communications plan, training plan, data collection, detailed study plan and validation of the study's scope should be accomplished during this phase.

### **C. Study Execution**

1. Once a study is initiated, the Functional Area Study Team Leader will notify the CSESG, through the OCS, of any proposed Full-Time Equivalent (FTE) expansions or decreases in the announced study.
2. Functional Area Study Team Leaders and/or Heads of Departmental Elements may petition the CSESG to review any commercial and/or inherently positions to ensure that they were properly coded and to determine if such positions should be included or excluded from a particular study.
3. The Functional Area Study Team Leader shall submit requests to the CSESG, through the OCS, to modify (change the type of study authorized), cancel, suspend, or delay a competitive sourcing study. All requests shall include sufficient justification detailing the reasons such proposed action should be taken.
4. For each A-76 Full Cost Comparison that may exceed twenty-four (24) months for a single-function study or thirty-six (36) months for a multi-function study (from the official start date to cost comparison bid opening), the Functional Area Study Team Leader must submit a report to the CSESG at least sixty (60) calendar days prior to the date the 24 to 36-month timeframe will be exceeded. This report includes a description of the problems encountered, remedial actions, status, and anticipated completion date. The Department will subsequently submit this report to the OMB.

5. During the course of a study, potentially affected employees will be kept apprised of the status of the study. Study teams will make every effort to consider employee, management, union, and customer views when preparing the PWS and Management Plan. In those instances where employees are represented by a labor organization accorded exclusive recognition under 5 USC 7111, the consultation requirement is satisfied by consultation with representatives of that labor organization. Periodic announcements shall be made to other interested parties on the plans and progress of on-going competitive sourcing studies. A communications plan will be developed for each approved study.
6. Functional Area Study Team Leaders shall establish a “firewall” regime for government employees in the early stages of a cost comparison study. As a practical matter, any individual involved with the construction of the PWS is ineligible to participate in the development of the MEO, and vice-versa. Upon establishment of the teams, the Functional Area Study Team Leader shall identify to the OCS and the Contracting Officer the individuals appointed to the PWS and MEO teams. Exceptions for any government personnel to serve on both teams require pre-approval of the Procurement Executive and the submission of a “Conflict of Interest Waiver” to the Contracting Officer. However, in no instance will employees violate conflict of interest or nondisclosure rules and practices.
7. When support service contractors are assisting in the preparation of the PWS or Management Plan or providing acquisition support, sufficient measures shall be taken to avoid potential conflicts of interest or the appearance of conflicts. If separate consulting companies cannot be used, a firewall shall be established between the consultant employees supporting the PWS, and those supporting the Management Plan. Support service contractors must provide the Functional Area Study Team Leader with a plan that ensures the integrity of the firewall is maintained. Firewall plans will be submitted to the OCS.
8. Whenever a competitive sourcing team (PWS, MEO, etc.) meets, to the extent appropriate, minutes of such meetings should be taken and entered into that specific team’s/sub-team’s study record.
9. The OCS will provide guidance and assistance to the Functional Area Study Team Leader throughout the A-76 study (full or streamlined cost comparison or direct conversion) process.
10. The OCS will maintain DOE’s A-76 Study Management Information System (ASMIS). The Functional Area Study Team Leader shall ensure the timely submission of study milestone data. ASMIS data requirements and milestones are contained in the CPSG.
11. DOE will use the win.COMPARE<sup>2</sup> software to prepare the government’s In-House Cost Estimate.

12. The Residual Organization Plan will be developed in conjunction with the development of the Management Plan.

#### **D. Contracting and Source Selection Issues**

1. As part of their proposals, the MEO and commercial offerors shall provide Transition Plans stating how they will progress from contract award, or MEO implementation, to performance if they win the cost comparison.
2. Once a Request for Proposals has been issued, any changes to the operation of the function under study shall be restricted to those required by agency decisions or necessary business decisions made by the Secretary of Energy, Deputy Secretary, the CSESG, or persons or entities assigned to act on behalf of the Department's senior leadership. Changes/modifications shall be well documented by the Contracting Officer who will inform the MEO Team and any commercial offerors as soon as possible.
3. The restriction of a solicitation to a preferential procurement program does not negate the requirement to perform a cost comparison. JWOD preferential procurement sources are accessible via three options: "A" – direct conversion to contract without cost comparison; option "B" – direct conversion with cost comparison at agency discretion; and, option "C" – unrestricted solicitation.
4. Source Selection for DOE competitive sourcing studies shall be conducted in accordance with the FAR. In that regard, no directly impacted employees may participate as the Source Selection Authority or as a member of the Source Selection Evaluation Board. Other specific acquisition related procedures are detailed in the DOE CPSG.
5. DOE will use formal source selection procedures to evaluate offers and will make its selection based on the offer that is the Government's best interest.

#### **E. Implementation**

1. In implementing competitive sourcing decisions, the Department will adhere to all applicable personnel statutes, regulations, and DOE specific human resources requirements documents. The Department will also make every effort to minimize adverse actions associated with competitive sourcing.
2. The Functional Area Study Team Leader will provide periodic updates to the DOE OCS on the status of transition actions and the assessment of support through the first year on the contract regardless of whether the selected provider is a commercial offeror or the Government's MEO. The purpose is to help monitor performance during both the transition period and the first year of full performance.

3. The Functional Area Study Team Leader shall implement the Transition Plan developed by the winning MEO, contractor, or ISSA provider.
4. Each Functional Area Study Team Leader shall develop a Contingency Plan that will provide instructions on implementing immediate action in the event the performing activity is terminated (regardless of cause), if the need should arise during transition or at any other time.
5. The transition phase, regardless of the winner of the competition, shall not exceed six (6) months. The Functional Area Study Team Leader must submit a formal extension request to the CSESG to exceed this allotted timeframe. Transitions will be carried out in accordance with the transition plans developed by the Functional Team Leader and the chosen provider. The Functional Area Study Team Leader shall periodically provide transition status information to the CSESG.

#### **F. Managing Results**

1. During the transition phase, the Functional Area Study Team Leader shall continually monitor performance to ensure proper treatment of cost and/or performance issues. After the end of the transition period and for the first full year of performance, the OCS will chair quarterly meetings, or Video-Teleconferences (VTCs), as a forum to gain visibility on the level of compliance with the approved acceptable cost, performance levels, or other metrics established by the PWS. The OCS should be notified of concerns relating to the performance of the performing activity. While the performance of a Contractor is thoroughly monitored by both the Administrative Contracting Officer and the Continuing Government Activity (CGA), it is equally important for the MEO to meet the requirements of the PWS as reflected in their Management Plan.
2. If a contractor or the MEO defaults or is otherwise terminated, the contracting officer shall seek interim support. If interim support is not feasible, the CSESG may authorize temporary in-house or Inter-Service Support Agreement performance. The Functional Area Study Team Leader shall coordinate any anticipated default or termination actions with the CSESG through the OCS as soon as default or termination issues are identified.
3. Post- MEO Performance reviews shall be conducted for all DOE studies that result in MEO implementation unless otherwise directed by the CSESG . This review shall be conducted on activities where the MEO has been fully implemented for at least one (1) year. Post MEO reviews will be conducted and an evaluation report will be provided to the CSESG.

## **Appendix A**

### **ROLES AND RESPONSIBILITIES**

#### **A. Competitive Sourcing Executive Steering Group**

1. The Competitive Sourcing Executive Steering Group (CSESG) serves as the Department of Energy's (DOE) Office of Management & Budget (OMB) Circular A-76 Competitive Sourcing (Paragraph 9a) Official with responsibility for implementation of the Circular and its Supplement within DOE.
2. The Secretary of Energy has appointed the following officials to serve as members of the CSESG:
  - Deputy Secretary of Energy
  - Under Secretary for Energy, Science and Environment
  - Under Secretary for Nuclear Security
  - Director, Office of Management, Budget and Evaluation/Chief Financial Officer
3. The CSESG chairman is the Deputy Secretary of Energy.
4. Advisory members to the CSESG include representatives from the offices of:
  - General Counsel
  - Congressional and Intergovernmental Affairs
  - Public Affairs
  - Designated National Union Representatives
5. Serving as the OMB Circular A-76 Competitive Sourcing (Paragraph 9a) Official, the CSESG:
  - Provides strategic direction and oversight for the execution of competitive sourcing studies.
  - Authorizes cost comparison waivers, exemptions and direct conversions to or from in-house, contract or Inter-Service Support Agreement (ISSA) performance.
  - Appoints Functional Study Team Leaders to be responsible for the execution of competitive sourcing studies, direct conversions and waivers.
  - Approves Functional Study Team Action Plans.
  - Appoints the Independent Review Officer for cost comparisons.
  - Appoints the Administrative Appeals Authority for cost comparisons and waivers.

#### **B. Functional Area Study Team Leader**

1. The Functional Area Study Team Leader is appointed by the CSESG and is responsible for the planning and execution of assigned cost comparison studies, direct conversions, and waivers.
2. The Functional Area Study Team Leader:



- Ensures compliance with the OMB Circular A-76, its RSH, and DOE's Competitive Sourcing policy and procedures to include competitive sourcing study firewall and conflict of interest provisions.
- Provides direction and oversees resources leading to the successful execution of cost comparison studies, direct conversions and waivers.
- Provides periodic reports on the status or execution of the cost comparison to the CSESG, OCS, and the affected workforce.
- Ensures the OCS is keep aware of study progress and issues throughout the course of the study.
- Appoints the Study Team to include:
  - PWS Team Leader and members;
  - PWS Certifying Authority;
  - MEO Team Leader and members; and
  - MEO Certifying Authority.
- Appoints other sub-Team Leaders and staff as necessary.

### **C. PWS Team Leader**

1. PWS Team Leaders. The PWS Team Leader is responsible for the development of the PWS Quality Assurance Surveillance Plan and Residual Organization Plan by the PWS Team in accordance with the Circular and DOE policy.
  - The Functional Area Study Team Leader appoints the PWS Team Leader.
  - The PWS Team Leader coordinates development of the PWS with the Contracting Officer, Human Resources, and General Counsel participants and is responsible for meeting, establishes schedule timelines and budgetary data for the PWS portion of the study.

### **D. PWS Certifying Authority**

1. The PWS Certifying Authority is independent of the PWS team and certifies that the PWS is valid and contains the requirements necessary to accomplish the function(s) and/or activities of the PWS before it is issued as a solicitation.
2. The Functional Area Study Team Leader appoints the PWS Certifying Authority.
3. The PWS Certifying Authority is normally two levels above the most senior person directly affected by the study and is functionally knowledgeable of study functional requirements. The PWS Certifying Authority is the signatory for the PWS.

### **E. Management Plan/Most Efficient Organization (MEO) Team Leader**

1. The Management Plan/MEO Team Leader is responsible for the development of the Government's Management Plan in accordance with the OMB Circular A-76 and DOE policy.
  - The Functional Area Study Team Leader appoints the Management Plan/MEO Team Leader.

- The Management Plan/MEO Team Leader coordinates development of the Management Plan and associated documents with the IRO, Contracting Officer, Human Resources, and General Counsel participants and is responsible for meeting established schedule timelines and budgetary data for the Management Plan portion of the study.
- Development of the components of the Management Plan including a MEO capable of accomplishing the requirements of the PWS and is competitive with potential private sector offerors.

#### **F. Most Efficient Organization (MEO) Certifying Authority**

1. The MEO Certifying Authority is independent of the PWS and MEO teams and validates the ability of the MEO to satisfy the requirements of the PWS and certifies the ability to commit to the approach/resources identified in the MEO.
2. The MEO Certifying Authority is appointed by the Functional Study Team Leader.
3. The MEO Certifying Authority is normally two levels above the most senior person directly affected by the study and is functionally knowledgeable of requirements. The MEO Certifying Authority is the signatory for the MEO.

#### **G. Independent Review Official (IRO)**

1. The IRO is responsible for reviewing the technical and management feasibility of the Management Plan and independently validating the Government's cost estimates.
2. The IRO is appointed by the CSESG.
3. The IRO should not be associated directly with the functional area under study.
  - The IRO shall form whatever evaluation teams he/she deems appropriate. However, the IRO team shall not include anyone who was involved in the development of the PWS, the Management Plan, or the MEO proposal.
  - The IRO formally begins its review after the MEO certification is completed and must complete its independent review prior to the closing of the solicitation.

#### **H. Administrative Appeal Authority**

1. The Administrative Appeal Authority serves as the A-76 Administrative Appeal Authority for any eligible appeals that are received by the Department.
2. The Administrative Appeal Authority is appointed by the CSESG.
  - The individual(s) selected must be independent of the activity under review or at least two organization levels above the official who certified the Government's Management Plan and MEO, in the case of a tentative cost comparison appeal.
  - The Appeal Authority ensures that the cost items challenged in the appeal are properly accounted for in accordance with OMB Circular A-76.

- The Appeal Authority also ensures that all participants to the cost comparison process have appropriate access to the decision process.

## **I. Source Selection Authority (SSA)**

The Source Selection Authority (SSA) is responsible for ensuring that the source chosen during the cost comparison can perform to sufficiently meet the agency requirements.

- The SSA is appointed by the cognizant Head of Contracting Activity.
- The SSA is responsible for tailoring the selection process to suit individual acquisitions to minimize the cost of the process for Government and industry.
- The SSA is also responsible for approving in writing the source selection plan and the evaluation factors before the solicitation is issued and before any pre-solicitation conferences are conducted.
- The SSA appoints the chairperson and members of the Source Selection Advisory Council (SSAC) (if one is established) and the Technical Evaluation Panel (TEP), assuring that these personnel have the skills and experience needed to execute the source selection plan.
- The SSA is charged with reviewing and approving the contracting officer's determination to exclude non-MEO offerors from the competitive range at any point in the selection process, making the final selection decision(s) and documenting the supporting rationale in a source selection decision document, and reviewing and approving the Contracting Officer's decision to issue a second call for best and final offer.

## **J. Contracting Officer**

1. The Contracting Officer in coordination with the SSA is responsible for conducting the acquisition process according to OMB Circular A-76 and the FAR to ensure that the competition is fair.
  - The Contracting Officer is appointed by the cognizant Head of Contracting Activity.
  - The Contracting Officer is responsible for:
    - o Determining the need for and conduct of pre-solicitation conferences to develop marketplace interest in the studies and pre-proposal conferences;
    - o Developing the business strategy and preparing the acquisition plan, in collaboration with the Functional Area Study Team Leader or their designee;
    - o Reviewing the source selection plan and evaluation standards prepared by the function/requiring program office for consistency with the requirement and compliance with the FAR as part of the source selection plan, for SSA approval, assuring that the relative importance of the evaluation factors is in a form for use in the solicitation;
    - o Preparing the solicitation and submitting it for review and approval by the SSA;
    - o Evaluating cost or price proposals;
    - o Providing to the SSA an evaluation of the reasonableness of each offeror's proposed price;
    - o Assessing which proposals are in the competitive range and recommend them to the SSA, through the SSAC, for approval;

- o Conducting discussions with offerors, as necessary, after the competitive range has been determined and approved by the SSA;
- o Forwarding the MEO proposal to the SSA along with an assessment as to whether or not the MEO proposal is based upon the same scope of work and performance levels as the best value commercial proposal. This is accomplished after selection of the apparent best value industry offer, and prior to performing the cost comparison;
- o Resolving conflict of interest issues.

#### **K. Office of the General Counsel**

The General Counsel provides advice to the CSESG, the OCS, procurement personnel, the Functional Area Study Leaders and study team participants, and other appointed competitive sourcing officials regarding conflicts of interest, ethics, and procurement integrity issues related to the A-76 process. The General Counsel also provides legal advisory services related to the A-76 process, including required notifications, Freedom of Information Act (FOIA) requests, protests, and appeals, etc.

#### **L. Office of Human Resources Management**

The Human Resources Management Office provides advice and assistance to the CSESG, the OCS, the Functional Area Study Leaders and study team participants, and other appointed competitive sourcing officials on employee rights and protections and personnel and labor relations issues related to the A-76 process, and, as necessary, to the contracting officer regarding exercise of the right of first refusal and human resource issues affecting contractors. The Human Resources Management Office will also provide assistance on “Reduction-In Force” and other adverse impact and transitional issues related to the Competitive Sourcing Program.

#### **M. Office of Public Affairs**

The Office of Public Affairs provides advice to the CSESG, the OCS, procurement personnel, the Functional Area Study Leaders and study team participants, and other appointed competitive sourcing officials on issues concerning public announcements related to the Competitive Sourcing Program.

#### **N. Office of Congressional and Intergovernmental Affairs**

The Office of Congressional and Intergovernmental Affairs provides the CSESG, the OCS, procurement personnel, the Functional Area Study Leaders and study team participants, and other appointed competitive sourcing officials advice on Congressional issues and intergovernmental issues related to the Competitive Sourcing Program.

## **O. Office of Competitive Sourcing/A-76**

The Office of Competitive Sourcing/A-76 (OCS) is DOE's focal point for competitive sourcing. The OCS provides administrative support and oversight of the DOE A-76 Competitive Sourcing Program and is responsible for coordinating all necessary activities to ensure the proper conduct of DOE's A-76 studies. The OCS serves as the secretariat for the CSESG, develops guidance and provides day-to-day management of the Competitive Sourcing Initiative. The OCS:

- Provides guidance and assistance to the Functional Area Study Team Leaders, Contracting Officers, Source Selection Authority, Administrative Appeals Authority, and Independent Review Officials regarding competitive sourcing policies and provides a forum for disseminating "Lessons Learned."
- Publishes guidance on DOE Competitive Sourcing policies and procedures.
- Prepares Congressional announcements of intention to perform cost comparisons and appropriate Congressional notifications of intention to award contracts.
- Monitors the overall progress of the Competitive Sourcing program, and maintains the status of the DOE IGCA inventory and cost comparison efforts including the review and approval of schedules for cost comparisons.
- Coordinates the FAIR Act Inventory and associated reporting requirements.
- Develops/determines measurement requirements and recommend optimal approaches for conducting cost comparisons.
- Monitors appeal officers' decisions.
- Ensures that Direct post - MEO performance reviews are conducted.
- Monitors competitive sourcing studies/activities funding.

## **Appendix B**

### **COMPETITIVE SOURCING CONFLICT OF INTEREST GUIDELINES**

#### **1. PURPOSE**

This Appendix identifies personal conflicts of interest (PCI), including participation, representation, post-employment, and procurement information restrictions, and organizational conflict of interest (OCI) restrictions relating to the conduct of Office of Management and Budget (OMB) Circular A-76 studies and associated procurement actions at the Department of Energy (DOE). All persons involved with Competitive Sourcing/A-76 studies and related procurements at the Department shall follow these guidelines, as well as relevant statutes, regulations, and DOE directives.

#### **2. APPLICABILITY AND SCOPE**

The Competitive Sourcing Conflicts of Interest Guidelines are applicable to all DOE organizations and staff responsible for the execution of the Department's Competitive Sourcing Program.

#### **3. CONTACTS FOR FURTHER ADVICE**

It is crucial that the Department and its employees ensure that there are no conflicts of interest or even the appearance of a conflict of interest in the execution of DOE's Competitive Sourcing Program and related procurement actions. In a number of precedent setting cases, the U.S. General Accounting Office (GAO) and the U.S. Courts have overturned procurement actions and/or awarded the contract to the private sector when personal and/or organizational conflicts of interests arose during the course of an agency A-76 study. The information below presents only a guideline; there is no clear rule that will cover every eventuality. Employees who participate on A-76 study teams and related procurement actions should pay close attention to personal conflict of interest provisions.

**Headquarters personnel may direct questions/concerns to the Office of the Assistant General Counsel for General Law (202-586-1522), [StandardsOfConduct@hq.doe.gov](mailto:StandardsOfConduct@hq.doe.gov). Field personnel may address questions to their respective field counsel.** Officials responsible for the overall conduct/management of the Department's A-76 studies should also be familiar with the OCI guidance described below. **Questions concerning organizational conflicts of interest should be directed to the Contracting Officer for that procurement.**

#### **4. PERSONAL CONFLICTS OF INTEREST**

A Federal employee who is adversely affected or separated as a result of an award under A-76 may be provided a Right of First Refusal. Federal Acquisition Regulation (FAR) 7.305(c) requires a contractor to provide Government employees the Right of First Refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment restrictions. Whether such

employees can assert those rights will depend on what functions they perform with respect to the A-76 program. An employee's Right of First Refusal may be affected by conflict of interest restrictions placed on employees who participate in A-76 related acquisition processes (e.g., source evaluation or selection). These restrictions may affect the employees' ability to seek outside employment opportunities, to serve as the winning contractor's representative, and/or to receive compensation from a winning contractor. However, merely providing information for, or participation in, the development of a Performance Work Statement (PWS) or Most Efficient Organization (MEO) may not in-and-of itself affect an employees' ability to exercise a Right of First Refusal. Each situation is fact specific and will depend, in part, on the extent of the employee's involvement in the decision-making processes.

#### **A. Participation Restrictions:**

1. A criminal statute prohibits a Federal employee from participating *personally and substantially*<sup>1</sup> in any *particular matter* in which, to his/her knowledge, the employee has a *financial interest* (18 U.S.C. 208). For purposes of this statute, the *financial interests* of the following persons and entities are imputed to the employee: spouse, minor children, general partner, any organization in which (s)he is serving as officer, director, trustee, general partner or employee, and any other person or organization with whom (s)he is negotiating or has any arrangement concerning prospective employment.
2. Even if circumstances do not present a conflict of interest under the above criminal statute, DOE employees may not work on a particular matter if a reasonable person, looking at the circumstances involved, would have grounds to question the employee's ability to be impartial in the matter. (5 C.F.R. 2635.502).
3. Specific Personal Conflict of Interest Issues:
  - a. *Salary and benefits.* Generally, employees have a financial interest in their own salary and position. However, the Office of Government Ethics (OGE) has established a limited exemption under 18 U.S.C. 208(a) which provides that:

[an] employee may participate in any particular matter  
[whether of general applicability or involving specific parties]  
where the disqualifying interest arises from Federal  
Government . . . salary or benefits, . . . except that an employee  
may not:

- (i) Make determinations that individually or specifically  
affect his own salary or benefits; or

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<sup>1</sup> *Personal participation* means direct participation or the "direct and active supervision" of a subordinate's participation. *Substantial participation* means that the employee's involvement is of significance to the matter. To be substantial, such participation would require more than official responsibility or knowledge or involvement on an administrative or peripheral issue. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may rise to the level of being substantial. [5 C.F.R. 2635.402(b)(4) and 2640.103(a)(2)].

- (ii) Make determinations, requests, or recommendations that individually or specially relate to, or affect, the salary or benefits, of any other person specified in section 208 [of title 18, United States Code]. [5 C.F.R. 2640.203(d)].

Example: An employee may participate in cost comparison activities, including the preparation of a PWS or MEO, provided that the individual does not make any determination that has a special or individual effect on their own salary or benefits. An employee's interest in his federal employment, even if his position may be abolished, is not a disqualifying interest for participation in the PWS or MEO.

Example: Absent an individual waiver under section 18 U.S.C. 208(b)(1), however, an employee may not participate in the implementation of an agency plan to create an employee stock ownership plan (ESOP) that would carry out agency functions under contract to the agency because implementing the plan would not only result in the elimination of the employee's federal position, but also in the creation of a new position to which the employee would be transferred.

- b. *Right of First Refusal.* FAR 7.305(c) requires contractors to provide Federal employees the Right of First Refusal for employment in all solicitations, which might result in a conversion from an in-house performance to the private sector. This right is speculative in that the contractor is only required to offer employment openings to qualified former government employees where vacancies exist. There is no guarantee of employment under this provision. Only if and when a contractor wins a competition and the company actually needs to hire employees, and that company determines that a particular former government employee is qualified, does an offer of employment truly exist. Thus the contingent right to first refusal of employment with a winning contractor does not give rise to a personal financial interest within the meaning of 18 U.S.C. 208.
- c. *Negotiating for Employment.* Three slightly different provisions potentially affect a government employee involved in competitive sourcing study who seeks employment with an affected bidder or offeror. These include:
  - (i) 18 U.S.C. 208: Knowing that (s)he may have a financial interest and his/her interests would be directly and predictably affected by the procurement, in order to seek outside employment, an employee may:
    - a. not participate personally and substantially in the A-76 procurement; or



- b. determine, in consultation with an ethics counselor, that a regulatory exemption is applicable (5 CFR 2640.203); or
  - c. obtain an agency waiver (5 CFR 2640.301).
- (ii) 5 CFR 2635, Subpart F: When an employee participates personally and substantially in a procurement, and seeks employment (including negotiations, sending an unsolicited resume to bidders or offerors and deferring employment negotiations) or has an employment arrangement with someone directly and predictably affected by the procurement, the employee must disqualify himself unless he obtains an agency waiver. (5 CFR 2635.605).
- (iii) 41 U.S.C. 423 (Procurement Integrity Act): When an employee participates personally and substantially in a procurement for a contract *in excess of \$100,000* and contacts, or is contacted by, a bidder or offeror about possible employment:
  - a. the employee must report the contact and,
  - b. either reject the offer or disqualify himself/herself in writing. If the employee immediately and clearly rejects the possibility of employment with the bidder or offeror, (s)he may continue to work on the procurement. If the employee recuses her/himself from participation in the procurement, (s)he may commence employment discussions. Continued participation in the procurement cannot be authorized until the employee rejects the offer or the bidder or offeror is no longer participating in the procurement.

CAUTION: “Personal and substantial participation,” as defined at 48 C.F.R. 3.104-3 for purposes of the Procurement Integrity Act, excludes “[f]or procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of ‘MEO’ analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.” Such participation, nevertheless, may be “personal and substantial” under the restrictions of 18 U.S.C. 208. Employees should consult with their ethics counselors under these circumstances.

## B. Representation Restrictions

There are two statutory prohibitions associated with employee representation activities:

1. 18 U.S.C. 203. This statute provides criminal and civil penalties for government employees who seek, receive, accept, or agree to accept compensation for representation services, as an agent or attorney or otherwise for another party, in relation to a ruling, determination, contract, claim or other particular matter in which the United States is a party or has a direct and substantial interest.
2. 18 U.S.C. 205. This statute provides civil or criminal penalties for government employees who, other than in the proper discharge of their official duties, act as an agent or attorney in the prosecution of a claim against the United States or before any department in connection with any covered matter in which the United States is a party or has a direct or substantial interest. A “covered matter” includes applications, contracts, claims or other particular matters.

Example: An employee could not submit a proposal to the government on behalf of a group of employees who are seeking to obtain a contract to perform a privatized Government function through an employee-owned company or ESOP. The restriction would apply whether or not the employee’s position would be eliminated because the function was being privatized. Employees who wish to submit such a proposal would have to retain a non-employee to represent them in the matter (OGE Letter 95 X 10).

## C. Post-Employment Restrictions

Restrictions applicable to Federal employees after leaving Federal service are found in the criminal conflict of interest statute (18 U.S.C. 207) and the Procurement Integrity Act (41 U.S.C. 423).

1. 18 U.S.C. 207: Government personnel who personally and substantially participated in, or were responsible for, a particular matter involving specific parties while employed by the government are prohibited from later “switching sides” and representing any party before the government on the same matter. *The restrictions of this statute do not prohibit employment, but only certain communications to and appearances before the government with the intent to influence an agency action.* 18 U.S.C. 207 contains six substantive provisions, only two of which are likely to have general applicability to employees involved in an A-76 cost comparison<sup>2</sup>.

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<sup>2</sup> Senior Executive Service, Executive Level, and other employees at equivalent levels should consult their ethics counselors for additional post-employment restrictions that may apply to them.

Specifically,

- a. the “lifetime bar” of 18 U.S.C. 207(a)(1) prohibits former government employees from knowingly making, with the intent to influence, any communication to, or appearance before, a government employee on behalf of any other person(s) (except the United States) in connection with *a particular matter involving a specific party or parties* in which the former employee previously participated personally and substantially as a government employee and in which the United States is a party or has a direct and substantial interest; and,
- b. the “two-year bar” of 18 U.S.C. 207(a)(2) prohibits former governmental employees from knowingly making, with the intent to influence, any communication to, or appearance before, a government employee on behalf of any other person(s) (except the United States) in connection *with a particular matter involving a specific party or parties* that was pending under the employee’s official responsibility during the one-year period of time prior to the employee’s separation from government employment and in which the United States is a party or has a direct and substantial interest. The term “official responsibility” means “the direct administration or operating authority, whether intermediate or final, and either exercisable alone or jointly with others, either personally or through subordinates, to approve, disapprove, or otherwise direct government action.” [18 U.S.C. 207(b)].

Example: Individuals working on an A-76 cost comparison are not prohibited from working for a winning contractor by 18 U.S.C. 207(a). They may be prohibited from representing their new contractor employer back to the government with regard to the contract, or a work-related issue, if they were either personally and substantially involved in the contract or issue, or if the matter was under their official responsibility.

2. The question of whether government procurements, including those conducted under A-76, *involve specific parties* is determined “... by the degree of interest expressed and contacts made with ... private parties as contractual requirements evolve.” (OGE Informal Advisory Letter 80 X 4). For example, while a contract becomes a “particular matter” (for purposes of the participation restrictions described above) when the request for proposal is being formulated, it would not ordinarily become a “particular matter involving a specific party or parties” until the proposal or indications of interest by contractors are first received by the agency. Whether the post-employment restrictions of 18 U.S.C. 207 are triggered may depend upon the degree of contractor input during the development of the PWS. Those restrictions become applicable when specific parties become identified.
3. Procurement Integrity Act: In contrast to the criminal post-employment restrictions, the Procurement Integrity Act would prohibit certain former government officials from accepting compensation from a successful bidder on a contract to privatize government functions for a period of one year after serving in certain governmental

capacities. Specifically, such compensation is barred for a period of one year after an employee:

- a. Serves at the time of selection of the contractor or award of the contract in excess of \$10 million as the procuring contacting officer, source selection authority, member of a source selection evaluation board, or chief of a financial or technical evaluation team; or,
- b. Serves as the program manager, deputy program manager, or administrative contracting officer (ACO) for a contract in excess of \$10 million; or,
- c. Personally made decisions on a contract concerning claims, contract modifications or task orders, or the issuance of a contract payment in excess of \$10 million.

The designated date varies depending upon the position held, but is generally the date of selection or award for individuals involved in the source selection process, the date of last service for program managers and ACOs, and the date of decision for all others.

Example: An employee who serves, at the time of the selection of the contractor or the award of the contract, as a member of a Source Selection Board for a procurement of \$10 million resulting from an A-76 study must (1) report any contact with a bidder concerning negotiations for employment, (2) reject the offer, or disqualify him/herself from participation in the procurement, as appropriate, and (3) may **not** accept employment and receive compensation from the awardee for one year from the award of the contract.

#### **D. Procurement Information Restrictions**

In addition to restrictions noted above, the Procurement Integrity Act establishes certain prohibitions and requirements relating to disclosing or obtaining procurement information. Specifically, present and former government officials, and persons who advised the United States regarding a procurement, are prohibited from knowingly disclosing contractor bid or proposal information or source selection information before the award of the contract. All persons are prohibited, except as otherwise authorized by law, from knowingly obtaining contractor bid and proposal information or source selection information before the award of the contract.

All Federal and contractor personnel involved with competitive sourcing/A-76 studies will protect source selection and other procurement sensitive information from unauthorized or inadvertent disclosure until such time as it is made available to the general public. Additionally, proprietary information will be safeguarded and will only be used when required to assist to the Government or to aid in technical evaluations of specific contractor's offers, products, or services.

In the case of A-76 studies, procurement sensitive information includes information collected and products developed in the conduct of the cost comparison study. The PWS and all working documents pertaining to it are considered procurement sensitive. The Government's Management Plan (MP) and all working documents are considered procurement sensitive until the public review period following the initial cost comparison decision, at which time such information must be made available to all interested parties.

The Government MP and relevant working documents are not considered to be proprietary information unless the MEO will be used in a subsequent cost comparison (e.g., at another site as part of a multi-location study). It is possible, however, that certain contractor proprietary information could be used in the development of the Government MP. This includes contractor-owned data systems (e.g., best practices databases) that might be used in formulating the MEO. It could also include information and/or systems owned by private sector vendors currently providing certain services under contract with the Government.

All Federal and contractor staff that require access to A-76 study and acquisition related procurement sensitive or contractor proprietary information will adhere to the procedures described below:

1. All procurement sensitive and proprietary information will be securely used, maintained, stored, and, transferred.
2. All hard copies of procurement sensitive information will be stored and maintained in an approved secure container with a locking mechanism. This information will be separated from all other support materials. When in use, the sensitive information will be maintained under strict control at all times.
3. Electronic files and systems will be secured and only those persons assigned to the respective A-76 team or official will have downloading and/or read access to such files/systems.
4. Only those persons who have a "need to know" will have access to and may receive specific and relevant procurement sensitive and proprietary information.
5. Each Team will maintain an updated list of individuals granted access rights to procurement/program sensitive information.
6. Teams will ensure that procurement sensitive and proprietary information is kept separate from general public information.
7. Data, analysis, working papers, options/recommendations, decision papers, or any other aspect of procurement sensitive, proprietary information or program sensitive data will not be communicated in any form to anyone outside of the respective PWS Team, MP Team, Acquisition Team, or any other formal A-76 Team until it has been formally released to the public.

8. The Contracting Officer assigned to a particular study will determine when and what information will be made available to the general public.
9. All personnel directly involved in an A-76 study, including prime contractor, subcontractor, and consultant staff supporting an A-76 activity, who require access to procurement sensitive information shall be required to execute a Non-Disclosure Agreement (NDA). This agreement (attached) outlines individual responsibilities with respect to the access and handling of procurement sensitive information. Signed NDAs will be maintained by the Functional Area Study Team Leaders and copies will be provided to the Department's Office of Competitive Sourcing/A-76 (OCS).
10. Procurement sensitive information no longer required will be returned to its origin, or disposed of in accordance with established records management and security procedures.

## **5. ORGANIZATIONAL CONFLICTS OF INTEREST**

The U.S. Code of Federal Regulations (C.F.R.) requires that: "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships." (48 C.F.R 3.101-1)

Conflict of interest rules, among other things, "serve to separate roles that require neutrality (such as drafting the ground rules of a competition) from those where advocacy is permissible (such as assisting one side in the ensuing competition)." (Comptroller General, B-286194.7, 5/29/02). The OMB Circular A-76 Revised Supplemental Handbook (RSH) states "Circular A-76 is not designed to simply contract out. Rather, it is designed to: . . . provide a level playing field between public and private offerors to a competition, and . . . encourage competition and choice in the management and performance of commercial activities."

In an A-76 cost comparison, the PWS provides the ground rules forming the basis of the competition while the MP, which includes the government's MEO proposal, represents the basis of the Government's in-house cost estimate. Since the MEO is essentially a bid, the GAO has determined that the MEO team "is essentially a competitor" (another bidder) in an A-76 cost comparison.

To maintain a level playing field and ensure that organizational conflicts of interest (OCI) do not arise during a cost comparison, the Department will follow the guidance primarily contained in the GAO decision in the case of Jones/Hill Joint Venture (B-286194.4, B-286194.5, B-286194.6 Dec 5, 2001) and GAO's application of FAR Subpart 9.5, "Organizational and Consultant Conflicts of Interest," to A-76 studies. As stated by the GAO, FAR 9.5 was written to apply to the conduct of contractors rather than government personnel in that it was written with private-private competitions in mind where only the behavior of contractor personnel is at issue. In the

context of an A-76 cost comparison, the government itself becomes a bidder for the services being solicited in the public-private competition, and so these rules of conduct apply to government employees as well.

FAR 9.501 defines “organizational conflict of interest” as a situation where as a result of one’s other activities or relationships, that individual or entity is unable or potentially unable to render impartial assistance or advice to the government, or the individual’s objectivity is or might be impaired, or the entity may have an unfair advantage in the procurement competition.

Example: A contractor consultant who has written a statement of work is not usually permitted to bid on performance of that statement of work because of the risk that the statement of work may be designed to benefit the consultant’s business interests rather than the interests of the government.

In the A-76 protest case of Jones/Hill Joint Venture (cited above), the GAO reasoned that allowing the same individuals to participate substantially in developing both the PWS (the requirements document) and the MP (the government’s in-house bid) violates OCI restrictions as expressed in the FAR and as established in previous GAO decisions.

The GAO’s decision in the Jones/Hill case on OCI rested on three primary points:

1. Unequal access to information,
2. Biased ground rules, and
3. Impaired objectivity.

Under unequal access to information, the GAO argued that allowing the same individuals to develop the PWS and the MP permits them earlier access to information than that available to private sector competitors in developing their proposals. By having the information sooner, the in-house government offeror would, unfairly, have more time to develop a proposal.

Under biased ground rules, the GAO argued that allowing the same individuals to develop the PWS and the MP provides the government an unfair competitive advantage in developing its bid and proposal.

Under impaired objectivity, the GAO argued that one’s ability to render impartial advice could appear to be undermined if that individual is closely related to the entity receiving the advice. If the same individual develops the PWS and the in-house proposal, there is at least the appearance that the PWS is not an objectively written (bidder-neutral) statement of work.

Lastly, in its decision pursuant to the Navy’s request for reconsideration (GAO Decision B-286194.7, dated May 29, 2002), which was subsequently denied, the GAO indicated that “...where a protest establishes facts that constitute a conflict or apparent conflict, we will presume prejudice unless the record affirmatively demonstrates its absence.” It is therefore imperative that the guidelines established in this Appendix be used to establish a plan of action that is followed and that sufficient records are maintained (e.g., minutes of meetings) to attest to

the fact that study participants were not allowed access to information in ways that would violate OCI restrictions.

In order to comply with OCI restrictions and to ensure the integrity of its procurements, the Department has established an infrastructure to manage and execute its Competitive Sourcing Program. The guidance provided below describes firewall provisions that will be taken into consideration in the development of team structures and the assignment of employees to work on various aspects of the competitive sourcing process. In summary, these guidelines ensure that DOE employees and contractor personnel who participate substantially in one aspect of the process do not inadvertently participate in or have access to information pertaining to other parts of the process that would otherwise violate OCI restriction. The table at Attachment 2 to this Appendix further describes how involvement in one area is impacted by involvement in another.

## **6. A-76 FIREWALL PROVISIONS**

1. Anyone (Federal or contractor employee) who serves as a member of the PWS team may not serve also as a member of the MP team.
2. The MEO may not be developed until after the PWS team has either completed the PWS or released a draft PWS to the contracting community for comment.
3. The contracting officer may not assist the MEO team in writing or developing the MEO. However, he or she - or anyone else from the Office of Procurement and Financial Assistance at Headquarters or field procurement offices - may provide guidance regarding acquisition-related laws, regulations, policies, and procedures.
4. The PWS approving official may not assist the MEO team.
5. The MEO certifying official may not assist the PWS team.
6. Anyone who participates as a source selection official (as a member of the technical evaluation team, as a member of any other source selection team or committee, or as the source selection authority) may not serve on or assist the MEO team.
7. Anyone who will be directly affected by the outcome of the procurement - that is, whose position is subject to being contracted out - may not participate as a source selection official.
8. Anyone who is directly involved in developing, reviewing, or approving the PWS should not have any direct communication with anyone who is a member of the MEO team about any aspect of the commercial activity or the A-76 Study.
9. The Department will not give the MEO team access to data that the PWS team has collected before providing it to the potential commercial offerors. Consequently, the MEO team should not receive any data except that collected or generated by its members.
10. In situations where personnel who are not members of either the PWS or MEO team work together to gather data, and their management subsequently assigns them to work on an



associated PWS or MEO teams, contemporaneous documentation will be established indicating that the employees' previous efforts were limited to data gathering and that they had no role in any decision-making. If the employee participated in the decision making process, they should not be assigned to a team.

**ORGANIZATIONAL CONFLICTS OF INTEREST CHART**

	<b>PWS/QASP Preparation</b>	<b>MEO Development</b>	<b>Independent Review</b>	<b>Source Selection</b>
<b>PWS team &amp; PWS approving officials</b>	OK	Conflict	Conflict	Maybe*
<b>MEO team &amp; MEO approving officials</b>	Conflict	OK	Conflict	Conflict
<b>Contracting Officer &amp; Source Selection team</b>	OK	Conflict	Conflict	OK
<b>Independent Review team</b>	Conflict	Conflict	OK	Conflict

\* The person who will serve as the source selection authority may not serve on or assist the PWS team if he or she is a member of, or organizationally affiliated with, the commercial activity under study.

**ATTACHMENT****DEPARTMENT OF ENERGY EMPLOYEE NON-DISCLOSURE AGREEMENT FOR PARTICIPATION IN A COMPETITIVE SOURCING/A-76 COMPETITION**

1. In the course of participating either in a direct (i.e., core team member) or in an advisory role (i.e., ad hoc team member) in support of a Competitive Sourcing/A-76 Competition or activity, I may be given access to or entrusted with sensitive Government information, such as data identified as Business Sensitive, Procurement Sensitive, Proprietary [e.g., 41 USC section 423, the Procurement Integrity Act restrictive legend per Federal Acquisition Regulation (FAR) 52.215-1)] or Source Selection Information (as defined in FAR 3.104-3) that may be associated with the ongoing Competitive Sourcing/A-76 Cost Competition or activity or future Competitive Sourcing/A-76 Cost Competition or activity. These sensitive data include, but are not limited to, all data, information and software, regardless of the medium, e.g. electronic or paper, and/or format in which the data exist, and includes data that are derived from, Source Selection, Business Sensitive, Procurement Sensitive and/or Proprietary Data (collectively referred to herein as “the data”).

2. As a condition to receiving access to the data, I agree not to discuss with, disclose, release, reproduce or otherwise provide or make available the data, or any portion thereof, to any other Government or non-government employee, person, or organization unless that other employee, person, or organization has signed a non-disclosure statement for this Competitive Sourcing/A-76 study. Furthermore, I agree to adhere to all safeguards established for the data and to use the data solely for the purpose of performing my role in support of the [INSERT name of Stage/Part of Study involved in, i.e., PWS, Government’s Management Study Plan, etc.]. If I have any questions about the non-disclosure guidance contained herein, I shall present those questions to the [INSERT title of Stage/Part of Study Team Leader or the Functional Area Study Team Leader or the Contracting Officer, depending on the activity of the study the individual is participating in].

3. I agree that these obligations not to inappropriately use, discuss, disclose, release, reproduce or otherwise provide or make available the data are binding upon me as required by applicable laws, regulations and Department of Energy directives.

4. I understand that any inappropriate use, disclosure, release or reproduction of the data is unauthorized and may result in criminal, civil and/or administrative penaltiesdisciplinary actions. I understand that nothing in this nondisclosure agreement changes, alters or, otherwise, is intended to replace the requirements of any applicable laws, regulations and Department of Energy directives. I freely and willingly sign this document, fully understanding its contents.

PRINTED NAME: \_\_\_\_\_

POSITION/TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

*9/19/02 version*